

**MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION
September 14, 2004**

The Rhode Island Ethics Commission held its 13th meeting of 2004 at 9:00 a.m. at the Rhode Island Ethics Commission Conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, September 14, 2004, pursuant to the notice published at the Commission Headquarters and on the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair Francis J. Flanagan
Patricia M. Moran, Vice-Chair * George E. Weavill, Jr.
Richard E. Kirby Frederick K. Butler
James V. Murray**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Commission Education Coordinator; Steven T. Cross, Commission Investigator and Peter J. Mancini, Commission Investigator.

At approximately 9:02 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on August 10, 2004. Upon motion made by George E. Weavill, Jr.

and duly seconded by Francis J. Flanagan, it was unanimously

VOTED: To approve the minutes of the Open Session held on August 10, 2004.

The next order of business was that of advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Donna M. Cone, Ph.D., a Coordinator, Community Planning and Development for the Rhode Island Department of Elderly Affairs. In response to Commissioner Weavill, Dr. Cone stated that she has been in the part-time position since 1992, but now is seeking an opinion after an inquiry by her supervisor. In response to Commissioner Kirby, she indicated that the group does not lobby the Department of Elderly Affairs. Upon motion made by Francis J. Flanagan and duly seconded by Frederick K. Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to of Donna M. Cone, Ph.D., a Coordinator, Community Planning and Development for the Rhode Island Department of Elderly Affairs.

The next advisory opinion was that of Howard E. Walker, Esq., a member of the Planning Board for the Town of Hopkinton. Commissioner Murray expressed concern regarding the existence of

a financial connection with the petitioner's prior firm establishing a business association, particularly whether he would be entitled to any profits or payments under a pension plan. Mr. Gramitt advised that he asked the petitioner if he had any equity interest in the firm and the petitioner replied that he no longer did. Commissioner Kirby noted that the case was referred from the Zoning Board to the Planning Board and the petitioner had previously recused. He stated that he would feel more comfortable speaking with the petitioner as to what caused the delay. Mr. Gramitt recommended that the Commission withdraw its safe harbor letter. Chair Lynch agreed that the petitioner should be present to answer questions. Upon motion made by James V. Murray and duly seconded by Richard E. Kirby, it was unanimously

VOTED: To withdraw the safe harbor letter previously issued to Howard E. Walker, Esq., a member of the Planning Board for the Town of Hopkinton.

The next advisory opinion was that of David J. Cluley, a Senior Civil Engineer for the Bridge Engineering Section, Rhode Island Department of Transportation. Upon motion made by George E. Weavill, Jr. and duly seconded by Richard E. Kirby, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to David J. Cluley, a Senior Civil Engineer for the Bridge Engineering Section,

Rhode Island Department of Transportation.

At 9:34 a.m., upon motion made by Frederick K. Butler and duly seconded by Francis J. Flanagan, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (a)(4), for the discussion of investigative proceedings regarding allegations of misconduct and/or the discussion of litigation, and approval of minutes relating to such discussions, to wit:

a) Motion to approve minutes of Executive Session held on August 10, 2004.

**b) In re: William Irons,
Complaint No. 2004-1**

**c) In re: Stanley Mruk,
Complaint No. 2004-6**

At 10:00 a.m., the Commission returned to Open Session. The next order of business was a motion to seal minutes of the Executive Session held on September 14, 2004. Upon motion made by Francis J. Flanagan and duly seconded by James V. Murray, it was unanimously

VOTED: To seal the minutes of the Executive Session held on September 14, 2004.

The next order of business was the Director's Report. Mr. Willever informed that 12 complaints are pending, 5 matters noticed for adjudication have settled and advisory opinions are current. He reported that, with the Chair's approval, he recently has been involved with the media in educational efforts.

The next order of business was consideration of the Prosecution's Motion to Dismiss in the matter of In re: George R. Levesque, Complaint No. 2001-54. Ms. D'Arezzo advised that, upon review of the file and weighing the costs/benefits of proceeding to adjudication on a financial disclosure case facing procedural weaknesses, the complaint should be dismissed. She informed that the probable cause hearing had been held in the Respondent's absence, after his attorney had requested a continuance. She also noted that the Prosecution could not prove at trial that a Notice of Finding of Probable Cause had been sent to the Respondent. She suggested that, even if it were successfully adjudicated before the Commission, the complaint likely would be challenged in the courts.

Commissioner Kirby recalled some of the events of the February 2002 probable cause hearing. Commissioner Butler expressed that he is not comfortable dismissing it based upon any statement of lesser emphasis on financial disclosure, but acknowledged there could be

procedural issues. In response to Commissioner Weavill, Ms. D'Arezzo stated that the Respondent had subsequently filed the 1999 statement. Upon motion made by Frederick K. Butler and duly seconded by James V. Murray, it was unanimously

VOTED: To dismiss, with prejudice, In re: George R. Levesque, Complaint No. 2001-54.

***Commissioner Moran arrives at 10:12 a.m.**

At 10:12 a.m. the Commission took a brief recess and reconvened at 10:30 a.m. for consideration of the Respondent's Motion to Dismiss in the matter of In re: Charles Golden, Complaint No. 2003-10. Legal Counsel Managhan recused and left the meeting. William J. Conley, Jr., Esq. was present to advise the Commission. Also present were the Respondent and his counsel, Christopher S. Gontarz, Esq. Attorney Gontarz represented that the Commission's prior finding of no probable cause that the Respondent used his public office to financial benefit his brother is inconsistent with its finding of probable cause that the Respondent violated section 5(a) of the Code. He indicated that the statutory language is clear and sections 5(a) and 7(a) must be read together. He asked the Commission to reconsider its prior finding and take another vote on whether the Respondent violated the statute.

Ms. D'Arezzo advised that the Prosecution does not disagree with

Attorney Gontarz's reading of the statutes. She opined that the Commission's findings, under these factual circumstances, are inconsistent. Commissioner Butler queried whether a second vote could be taken as to probable cause. Legal Counsel informed that there is no procedural mechanism by which to reconsider a probable cause finding and the Respondent really is requesting a dismissal. He stated that sections 5(a) and 5(d) must be read in light of section 7(a), and statutory construction authority from the RI Supreme Court supports the Respondent's argument. Legal Counsel agreed with the Prosecution that under these facts and circumstances the Commission is legally compelled to apply section 7(a) to the remaining allegation. He suggested that a motion to dismiss would be in order. Upon motion made by Francis J. Flanagan and duly seconded by Frederick K. Butler, it was unanimously

VOTED: To grant the Respondent's motion to dismiss.

ABSTENTION: George E. Weavill, Jr.

Attorney Gontarz noted that the Respondent had set forth a written request for the award of attorneys' fees under the Roney amendment in both his original and supplemental Answers. He indicated that his Motion to Redact previously was before the Commission and granted.

He stated that this is the case with which to set an example of what frivolous and mean-spirited Complaints do, noting that the Complainant had been told ahead of time not to include certain

information in the Complaint. Attorney Gontarz advised that the Respondent would be available for an evidentiary hearing, but would request the Commission's assistance with the issuance of subpoena if testimony were required.

Legal Counsel confirmed that the Respondent raised the request in his original Answer and renewed it in his supplemental Answer. He explained that for the Commission to determine if sanctions should be levied under section 12(d), significant case law states it must be done with notice and opportunity to be heard. He stated that if the Commission wishes to proceed under section 12(d), it must notice the Complainant for a hearing on the Respondent's motion. If it grants the motion, it must then conduct an evidentiary hearing as to sanctions. Commissioner Kirby asked if they should weigh in now or later on whether they want to proceed under 12(d). Legal Counsel emphasized that the Complainant first must be noticed and given the opportunity to be heard. Ms. D'Arezzo informed that the staff would send out the appropriate notices for a hearing in Open Session on October 4, 2004.

Prior to adjournment, the Chair reported on all actions taken in the Executive Session. At 10:55 a.m., upon motion made by Francis J. Flanagan and duly seconded by James V. Murray, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

Robin L. Main

Secretary